American Telephone and Telegraph Company, Network Systems Customer Support and Operations Division *and* Michigan Local 4090, Communications Workers of America, AFL–CIO. Case 7–CA–32168

December 16, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On July 2, 1992, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, American Telephone and Telegraph Company, Network Systems Customer Support and Operations Division, Oak Park, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act, we note that the Respondent's exceptions are limited to the issue of whether the Union waived its right to bargain about the subcontracting of unit work discussed at sec. II of the judge's decision.

Janice H. Jones, Esq., for the General Counsel.
John H. Curley, Esq., of Morristown, New Jersey, for the Respondent.

DECISION

STATEMENT OF THE CASE

STEPHEN J. GROSS, Administrative Law Judge. The employees of American Telephone and Telegraph Company (AT&T) are divided into a number of bargaining units. The Communications Workers of America (CWA) is the exclusive collective-bargaining representative of many of those employees. The employees of concern to us here are those employed in Michigan by AT&T's Network Systems Customer Support and Operations Division (the Respondent). These employees are all members of the following bargaining unit, which is nationwide in scope and which is represented by the CWA:

> All communication equipment workers (hourly-rated, non-supervisory employees) of the installation field forces of AT&T.

At all material times the collective-bargaining agreement between the CWA and the Respondent covering this unit provided that the Charging Party, Local 4090, would handle certain bargaining representation functions for the Michigan members of the unit. The collective-bargaining agreement also provided that the CWA could delegate certain additional functions to Local 4090.

In 1991, the Respondent began to contract out work within Michigan. The officers of Local 4090 deemed some of the contracted-out work to be bargaining unit work. (All the events discussed in this decision occurred in 1991 unless otherwise specified.) The Union asked the Respondent for information about the subcontracting. The Respondent provided some, but only some, of the information sought by Local 4090.

That led Local 4090 to file an unfair labor practice charge against the Respondent, on August 5. A complaint dated September 26 followed. The complaint alleges that, by failing to provide the requested information, the Respondent violated Section 8(a)(5) and (1) of the Act.

The Respondent denies that it violated the Act in any respect. According to the Respondent: (1) Local 4090's reason for wanting the information was in order to be better able to bargain about subcontracting, but the collective-bargaining agreement then in force precluded midterm bargaining about subcontracting absent the consent of the parties;[1] (2) even if the Respondent was required to bargain about subcontracting and, therefore, to provide information about it, the Respondent owed that duty only to the CWA, not to Local 4090; and (3) even if the Respondent was obligated to bargain with Local 4090 about subcontracting, most of the information Local 4090 sought was neither relevant nor necessary to the Union's bargaining obligations.[2]

I heard the case in Detroit on February 3, 1992.

I. THE SUBCONTRACTING BY THE RESPONDENT; LOCAL 4090'S REQUEST FOR INFORMATION

Sometime in or prior to 1990, GTE Corporation and AT&T entered into an arrangement whereby the AT&T undertook to install telephone lines for GTE in Ohio and Michigan. AT&T's work for GTE was to be mostly, if not wholly, ''outside plant'' work. That is, burying underground cables, running aerial cables, and interconnecting cables. The members of Local 4090, on the other hand, were trained to handle ''central office work''—that is, work on communications equipment inside telephone buildings. (By ''members of Local 4090,'' I mean the Michigan members of the bar-

[1] AT&T admits, at least impliedly, that if the collective-bargaining agreement did not give it the right to contract out, the Company would have been obligated to bargain with the bargaining representative of the unit employees. That is, AT&T does not claim that the nature of its subcontracting was such that the rationale of *First National Maintenance Corp.*, 452 U.S. 666 (1981), applies.

[2] AT&T admits that it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the National Labor Relations Act (the Act). AT&T also admits that the CWA and Local 4090 are labor organizations within the meaning of Sec. 2(5) of the Act.

gaining unit described above.) Local 4090 Vice President Klein, for instance, testified that he has ''never worked in the outside plant area.''

AT&T advised Local 4090 about its arrangement with GTE, and sometime in 1990 discussions about the subject began between the Respondent and Local 4090. Initially the talks concerned issues related to AT&T's plan to train members of Local 4090 to do the GTE-project work.

Early in 1991 an AT&T official advised Local 4090 that AT&T planned to contract out some of the work on the GTE project, but only those types of work for which Local 4090's members ''weren't equipped or trained to do.''[3] Local 4090, however, soon ''got reports from Ohio'' (where the Respondent's work for GTE had begun prior to its startup in Michigan) ''that the subcontracting was more extensive than the company had told us.''[4] According to those reports the subcontractors were doing some central office work—the kind of work that Local 4090's members were trained to do.

AT&T's work for GTE in Michigan began in April and, as in Ohio, the Respondent entered into subcontracts covering some of the GTE-project work. In May and on various occasions thereafter, officials of Local 4090 wrote to the Respondent, asking for information about the Respondent's subcontracting of GTE-project work.

Beginning in late July the Respondent's local officials did provide some of the information. But apart from these partial responses, Respondent's responses to the information requests were, in the main, either: silence; or claims that the information was not available; or the contention that the subcontracting issue should be handled by bargaining between Respondent's headquarters and the CWA; or the contention that ''the issue of subcontracting'' was covered by the collective-bargaining agreement then in force and that the Respondent was ''not obligated to bargain for modification of the current agreement during its term.''

II. DID THE COLLECTIVE-BARGAINING AGREEMENT THEN IN FORCE PERMIT THE RESPONDENT TO SUBCONTRACT WITHOUT BARGAINING

In this part of the decision I consider whether the terms of the collective-bargaining agreement between the Respondent and the CWA permitted the Respondent to refuse to respond to Local 4090's information requests. For the purposes of this discussion I will assume that: (1) Local 4090 was the proper entity to bargain with the Respondent about the Respondent's subcontracting of work in Michigan; and (2) the requested information was relevant and necessary to Local 4090's bargaining obligations.

The collective-bargaining agreement in force during the events of interest to us here covered the period May 1989 through May 1992. The prior collective-bargaining agreement included in it a letter from a member of AT&T's management, Raymond E. Williams, to the president of the CWA, Morton Bahr, concerning subcontracting by AT&T.

In 1989, in the course of ''National'' bargaining (that is nationwide, multiunit bargaining), the CWA proposed that AT&T agree not to subcontract at all. Considerable discussion followed. The upshot of that discussion was the republication of the 1986 Williams/Bahr letter, changed slightly and redated. The republication took the form of an attachment to a memorandum of understanding between AT&T, on the one hand, and, on the other, the CWA and the International Brotherhood of Electrical Workers Systems Council T-3 (the IBEW).[5]

The 1989 version of the letter from AT&T's Williams to the CWA's Bahr reads:

> I am writing to respond to your expressions of concern raised at the Operations bargaining table regarding the Company's contracting out of work, which have focused on situations in which a layoff is pending or has occurred (and exbargaining unit members retain recall rights) within the same geographical commuting area where the work is to be contracted, and in job titles whose occupants would traditionally have performed such work.
>
> I do not believe that CWA and AT&T have diverse views on this subject.[6]
>
> As to . . . work normally performed by our employees, we have always preferred not to contract such work out if it would otherwise be performed by bargaining unit employees in job titles in a geographical commuting area (1) where layoffs of such employees are pending; or (2) where a layoff has already occurred and such laid off bargaining unit members retain recall rights and are available to perform such work.[7]
>
> In the future, the Company will not contract out such work, under the conditions outlined above, except when it has no other reasonable alternative. Under such circumstances, the Company will discuss its decision with the Union.

The memorandum of understanding to which the Williams/Bahr letter was appended includes the following provisions:

> This Memorandum of Understanding . . . set[s] forth the Understandings reached at the National level as to wages, hours, terms and conditions of employment that have application to all Operations Units.
>
> This Memorandum binds AT&T and its Operations Units, the CWA and IBEW to incorporate the agreed upon items into the collective-bargaining agreements which will be executed.

In keeping with the memorandum of understanding, the Respondent and the CWA included the 1989 Williams/Bahr letter in their 1989 collective-bargaining agreement. (Apart from that letter, the collective-bargaining agreement says nothing about subcontracting.)

---

[3] Local 4090 Vice President Michael Klein, testifying about what an AT&T official told him.

[4] Witness Klein.

[5] The IBEW represents some AT&T bargaining units.

[6] The comparable letter from AT&T to the IBEW of course refers to the IBEW instead of the CWA.

[7] The ellipses are in place of the word ''other.'' Thus, in the original, this paragraph begins: ''As to other work normally.'' But the ''other'' clearly is a mistake, having been in a comparable paragraph in the 1986 version of this letter, which version included this sentence just prior to the paragraph under discussion here: ''The Company must retain discretion to outsource materials and products in manufacturing facilities.''

''[Th]e duty to provide information is coextensive with the statutory duty to bargain concerning mandatory subjects.'' *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223 fn. 1 (1988). In many circumstances an employer's decision to contract out unit work is a mandatory subject of bargaining. E.g., *Fibreboard Paper Products*, 379 U.S. 203 (1964); *Torrington Industries*, 307 NLRB 809 (1992). A union accordingly may demand information from an employer reasonably calculated to permit the union to determine, inter alia, whether the subcontracting by the employer is a mandatory subject of bargaining, *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *Arch of West Virginia*, 304 NLRB 1089 (1991); cf. *Brisco Sheet Metal*, 307 NLRB 361 (1992); and, if it is, to prepare itself for such bargaining. E.g., *Arch of West Virginia*, supra; *General Electric Co*., 294 NLRB 146 (1989), enf. denied 916 F.2d 1163 (7th Cir. 1990).

But a union may waive its right to bargain about the contracting out of unit work by agreeing in advance that the employer may unilaterally undertake such action. E.g., *Island Creek Coal Co*., 289 NLRB 851 (1988), enfd. 879 F.2d 939 (D.C. Cir. 1989); *American Stores Packing Co*., 277 NLRB 1656 (1986). The question, therefore, is whether by entering into a collective-bargaining agreement that included the Williams/Bahr letter, the CWA waived its right to bargain about the subcontracting that concerned Local 4090.

Certainly a waiver by the CWA can be read into the Williams/Bahr letter. In that letter AT&T agreed that it would discuss with the union certain sub-contracting when specified types of layoffs had occurred or were pending. Subcontracting under other circumstances is not mentioned. One possible interpretation of the letter thus is that AT&T was entitled to subcontract, without discussing the subcontracting with the union, in all situations except in those specified layoff situations.

If that interpretation is the correct one then the union had waived the duty to bargain about the GTE subcontracting because no layoffs had occurred or were pending.

But another interpretation of the Williams/Bahr letter is possible. In 1989 (as now) not all decisions by employers to contract out unit work created a duty to bargain. In particular, an employer was under no obligation to bargain about subcontracting that stemmed from an alteration in the employer's ''basic operation.'' *First National Maintenance Corp*., supra, 452 U.S. at 679, quoting *Fibreboard Paper Products*, supra, 379 U.S. at 213. The Williams/Bahr letter accordingly can be read as an agreement that had the purpose of requiring AT&T to ''discuss'' with the union all plans to subcontract in which the circumstances specified in the letter obtained, even if the subcontracting was part of an alteration in AT&T's ''basic operation'' and thus was one that AT&T, but for the agreement, could undertake unilaterally.

Under this interpretation, the letter relates only to subcontracting under the specified circumstances and does not apply at all to subcontracting in other circumstances (as, indeed, the first paragraph of the letter also suggests).

A waiver of a union's right to bargain about an employer's contracting out of unit work will be recognized only if it is ''clear and unmistakable.'' *Olivetti Office U.S.A. v. NLRB*, 926 F.2d 181, 187 (2d Cir. 1991), cert. denied 112 S.Ct. 168 (1991), quoting *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). And here: (1) the collective-bargaining agreement does not specify that the Respondent was entitled to contract unit work out without bargaining; and (2) an interpretation can be given to the only possibly relevant part of the collective-bargaining agreement—the Williams/Bahr letter—by which the letter makes sense without reading it as granting such unilateral authority to the Respondent.[8]

The Respondent, however, points to the bargaining history behind the inclusion of the Williams/Bahr letter in the collective-bargaining agreement. And there is no doubt that in construing the provisions of a collective-bargaining agreement, ''careful consideration'' must ''be accorded extrinsic evidence bearing on the parties' intent.'' *Indianapolis Power Co*., 291 NLRB 1039 (1988), enfd. 898 F.2d 524 (7th Cir. 1990); see *Speedrack, Inc*., 293 NLRB 1054 fn. 5 (1989). Here the inclusion of the Williams/Bahr letter followed contract negotiations about a proposal by the CWA that AT&T agree not to subcontract at all.

But I fail to see why that bargaining history suggests that the inclusion of the Williams/Bahr letter in the collective-bargaining agreement should be interpreted as an agreement that the Respondent could unilaterally subcontract unit work.[9]

I accordingly conclude that the collective-bargaining agreement does not waive the CWA's (or Local 4090's) right to bargain about the subcontracting in question.

III. THE AUTHORITY OF LOCAL 4090 TO BARGAIN ABOUT SUBCONTRACTING

The CWA, not Local 4090, is the exclusive bargaining representative of the employees in the bargaining unit. But a union that is the bargaining representative of a unit of employees may lawfully delegate bargaining authority to another union. See *Kodiak Island Hospital*, 244 NLRB 929 (1979). The Respondent, however, contends that there was no such delegation; or rather, no valid delegation.

I conclude that the Respondent is estopped from raising that contention.

For purposes of analysis, let us hypothesize facts different from those presented by the record. Let us assume that: (1) prior to the subcontracting, the Respondent advised the CWA about the proposed subcontracting and offered to bargain about it; (2) the CWA, in response, demanded that the Respondent bargain with Local 4090 concerning the Michigan facets of the subcontracting; and (3) the Respondent insisted

[8] The article of the collective-bargaining agreement entitled ''Application and Interpretation of Contract'' provides, inter alia, that:

> The provisions of this contract may be amended by mutual consent of the parties. . . . Matters not specifically covered by this contract may be negotiated and made a supplement to this contract.

I do not read this language as affecting the foregoing discussion.

[9] A September (1991) memorandum from a CWA official to Local 4090 president Horton purports to delegate to Local 4090 the ''authority . . . to negotiate with local AT&T management concerning the issue of subcontracting.'' That memorandum goes on to state: ''Nothing in the Bahr/Williams letter of 5/27/89 precludes the Local's right to these negotiations.'' Additionally, Local 4090 Vice President Klein testified about a telephone conversation he had with officials of the CWA to the same effect. I do not consider either the letter or the testimony about the telephone conversation to be a persuasive indication of the meaning of the collective-bargaining agreement.

on bargaining with the CWA, rather than Local 4090, about the subcontracting.

In those circumstances, the Respondent's contention concerning the lack of Local 4090's bargaining authority would be a powerful one.

The collective-bargaining agreement covers delegations of the CWA's authority to local CWA unions. As such, it constitutes an agreement by the CWA to limit its delegations of authority in the ways and for the purposes specified in the agreement.

The only specific delegation of authority in the collective-bargaining agreement that is even possibly relevant to our concerns here is the authority of local unions to handle grievances.[10] It is by no means entirely clear that, under the hypothesized facts, such grievance authority would give local unions the authority to bargain about subcontracting.

The collective-bargaining agreement also permits the CWA to delegate additional matters to the locals, so long as those matters are ''exclusively local in character.''[11] (And, in fact, in September (1991) the CWA did purport to specifically authorize Local 4090 to bargain with the Respondent concerning the subcontracting in Michigan.) But the GTE project that gave rise to the subcontracting covered two States (Ohio and Michigan), not just one. Additionally, the position of Local 4090 was that under the collective-bargaining agreement the Respondent could not properly subcontract at all without union permission.[12] Local 4090 did not contend that there was anything unique in this respect about the subcontracting in Michigan. Thus, under the hypothesized facts the Respondent could reasonably argue that the delegation to Local 4090 was invalid since the subject of the purported bargaining authority was not exclusively local in character.

But the hypothesized facts are critically different from what in fact occurred. As far the record here indicates, the Respondent never proposed to bargain with the CWA about the subcontracting. Rather, the Respondent, via its local office, raised the matter of the GTE project with Local 4090. When the local asked about subcontracting in connection with the GTE project, the Respondent, without objection, entered into discussions with the local about the subcontracting. The first time the Respondent took the position that the subcontracting was a matter for bargaining between its headquarters and the CWA was in August 1991, about a half year after discussions with Local 4090 concerning the subcontracting had first begun and 3 months after the local had first made its information requests.

By entering into discussions with Local 4090 about the GTE-project subcontracting in Michigan, the Respondent communicated to Local 4090 the position that it considered the local to be the proper entity with which to bargain about such subcontracting. Local 4090, in turn, made the information requests at issue in order to obtain information it considered relevant for the conduct of its bargaining efforts. Under these circumstances the Respondent may not, because it is displeased with the local's information requests, subsequently reverse direction and claim that only the CWA has the authority to bargain about subcontracting. See, e.g., *Sewell-Allen Big Star, Inc*., 294 NLRB 312, 313 (1989), enfd. mem. 943 F.2d 52 (6th Cir. 1991).

IV. THE RELEVANCE OF THE UNION'S INFORMATION REQUESTS

All this brings us to the particular information sought by Local 4090.

On the one hand, ''an employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities.'' *Associated General Contractors of California*, 242 NLRB 891, 893 (1979), enfd. as modified 633 F.2d 766 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). On the other hand, since the information requests at issue are for information about nonunit employees and circumstances, the information is not presumptively relevant:

> Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required; but where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise.'' *Ohio Power Co*., 216 NLRB 987, 991 (1975), enfd. per curiam, 531 F.2d 1381 (6th Cir. 1976).

In these circumstances ''the union is under the burden to establish the relevance of such information.'' *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984).

Relevance, clearly, is the touchstone. But in this case that raises the question of relevance to what? To the particular issues that Local 4090 told the Respondent it wanted to bargain about? To all issues having to do with the subcontracting that the union was concerned about, whether or not the union had advised the Respondent of such concerns? To any issue that a union, faced with the Respondent's subcontracting, might reasonably have wanted to bargain about?

The information-request cases arising under the Act have not always focused on this issue. But cases such as *American Stores Packing Co*.,[13] *Emery Industries*,[14] and *Western Massachusetts Electric Co*.[15] suggest that the relevance of a union's request for information should be measured against: (1) what reasons the union gave the employer about why the union wanted the information; and (2) the circumstances sur-

[10] ''The National [i.e., the CWA] hereby delegates to each of the Locals [specifically including Local 4090] jurisdiction over all grievances as to employees who are within their respective jurisdictions.''

[11] The provision reads, in full: ''The National shall have exclusive bargaining authority except insofar as jurisdiction is herein specifically delegated to the Locals. With respect to any subject proper for collective bargaining and exclusively local in character, not covered by this contract, the National may, by specific delegation, authorize the Local to bargain locally on such subject. In each such case, the National shall forward to the Company a copy of the delegation of authority.''

[12] See pt. IV.

[13] 277 NLRB 1656, 1659 (1986).

[14] 268 NLRB 824, 825 (1984).

[15] 228 NLRB 607, 623 (1977), enf. as modified 573 F.2d 101 (1st Cir. 1978).

rounding the information request to the extent that they ''are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out.'' *Emery*, supra, quoting *Brazos Electric Power Cooperative*, 241 NLRB 1016, 1018 (1979). Relevance thus is to be measured against the union's reasons for wanting the information of which the employer has either ''actual notice'' or ''constructive notice.'' *Emery*, supra at 824–825.

Local 4090's first request for information was set out in a May 2 letter to the Respondent from Union Vice President Klein. The letter reads:

> At our meeting of 4–18–91, you indicated that the company intended to use subcontractors for a portion of the GTE project in Michigan and I expressed the union's concern over subcontracting work that should be done by members of our bargaining unit. Let me further state that the Union's position is that contract CWA-19, the work codes in SD-11-1421-2, and the CWA Local 4090 Charter [give] the installers we represent first right of refusal to the work on the GTE project contracted by AT&T Network Systems.[16]
>
> In regards to the above, the Union must insist that the company provide the following information before assigning subcontractors to work in Michigan.
>
> 1. Names of subcontracting companies and their unions.
> 2. Location of each subcontractor's work sites.
> 3. The [approximate] number of employees subcontractors will use.
> 4. Description of all work operations to be performed by subcontractors.

When the Respondent did not provide the information, the Union, in meetings with officials of the Respondent in June, and in a June 17 letter, repeated the earlier request for information. Then, in a letter dated July 22, Local 4090 President Horton asked for the following information in addition to the four information requests already discussed. Horton did not give any reasons for wanting the information. He just referred back to Klein's May 2 letter.

> 1. Copies of contracts between AT&T and subcontractors on the GTE project in Michigan.
> 2. Dates that bids were made and names and addresses of bidders. When solicitations for bids [were] made.
> 3. Approximate dollar value of all work that is to be subcontracted.
> 4. Duration of all sub-contracts—beginning and ending dates.
> 5. Names of the principle officers of each subcontracting company used by AT&T.
> 6. The names of any former AT&T employees who work for subcontractors used by AT&T [on] the Michigan GTE project.
> 7. Copies of AT&T contracts with GTE to do outside plant work in Michigan and the approximate dollar value of these contracts.

In an August 5 letter to the Respondent, Union President Horton reiterated the Union's position about why it wanted the information:

> On 5–2–91 the union made you aware of our position on subcontracting. That position is that our members have first right of refusal of AT&T's work. We have requested information that we need to discuss the issue.

Until the hearing, Local 4090 did not inform the Respondent of any other reasons the Union wanted the requested information.[17]

The Union's letters of May 2 and August 5 amount to statements that: (1) the collective-bargaining agreement, among other documents, precluded the Respondent from contracting out bargaining unit work; (2) the Union intended to support the grievances of any members of Local 4090 to the effect that the members should have been given the GTE-project jobs that instead went to sub-contractors; and (3) Local 4090 wanted the specified information in order to more effectively press its contention that the subcontracting was contrary to the Respondent's agreements with the CWA and to be better able to prosecute the grievances.

As for whether the Respondent should have constructively been on notice that the Union wanted the information for additional reasons, it seems pertinent to me that the Respondent knew that the officers of Local 4090 knew that: (1) the subcontracting involved a project that AT&T had undertaken for GTE—it did not involve traditional AT&T work; (2) the heart of the GTE project was outside plant work, which Local 4090's members were not trained to handle; (3) the Respondent had made no claim that costs were the reason that it was subcontracting GTE-project work and instead had referred to the lack of trained bargaining unit personnel; (4) the subcontracting had not caused any layoffs, no layoffs were pending, and no members of Local 4090 were on layoff; and (5) the Respondent planned to bring additional bargaining unit employees into Michigan to work on the GTE project. From the Respondent's point of view, each of these circumstances should have narrowed Local 4090's areas of concern about the subcontracting. Respondent accordingly had no constructive notice that Local 4090 had reasons for desiring the requested information beyond those specified in Klein's letter of May 2.

This brings us back to the particular information requested by the Union.

Turning first to Klein's May 2 letter, information requests 2 (location of subcontractor worksites), 3 (number of subcontractor employees), and 4 (description of subcontractor work operations) are plainly relevant to the Union's needs. Information request 1 (names of subcontracting companies and their unions) is not.

[16] ''CWA-19'' is the 1989–1992 collective-bargaining agreement to which reference has been made. The record provides no further information about the ''work codes'' and union charter to which Klein's letter refers.

[17] At the hearing Local 4090 President Horton and, to a lesser extent, Vice President Klein, listed numerous reasons for wanting the requested information. See Tr. 9, 17, 19, 26–28, 42, 78–81, 83–85. I am not convinced that Klein and Horton had all those reasons in mind prior to the hearing.

As for the information requested by Horton on July 22, item 4 (duration of all subcontracts) is information that might well be pertinent to bargaining unit members in deciding whether to grieve their rights to particular work that the Respondent contracted out. But I am not persuaded that any of the other information requests in Horton's July 22 letter could reasonably be deemed by the Respondent to be relevant to the reasons that Local 4090 gave for wanting the information.[18]

The Respondent has not provided any of the information requested in Horton's July 22 letter.

As for the information requested in Klein's letter of May 2, one of the Respondent's officials provided the Union with some of the information (the name of a subcontractor and a description of the subcontracted work) in the course of a telephone conversation in late July 1991. Then, in letters dated August 8 and 18—that is, more than 4 months after Klein had asked for the information and shortly after Local 4090 filed its unfair labor practice charge—the Respondent provided information that responded to all four of the information requests in Klein's May 2 letter. But neither in those letters nor otherwise did the Respondent advise the Union that the information thereby provided was a complete response to these four information requests. In fact the Respondent indicated that the information as provided was incomplete. Both letters ended with the sentence: ''I will keep you informed as additional information becomes available.''

At the hearing, the Respondent did not introduce evidence about whether or not the information it has provided constitutes a complete response to any of Local 4090's information requests. In fact no official of the Respondent who is knowledgeable about the subcontracting at issue was called as a witness. Nor has the Respondent claimed either in its answer to the complaint or in its brief that it has fully responded to any of the information requests.

Under all these circumstances I conclude that:

The Respondent, by unduly delaying providing the information requested by items 2, 3, and 4 of Klein's May 2 letter,[19] and by failing and refusing to respond completely to those three requests, violated Section 8(a)(5) and (1) of the Act.

By failing and refusing to provide Local 4090 with information about the duration of all subcontracts pertaining to the work in Michigan on the GTE project (item 3 in Horton's letter), the Respondent violated Section 8(a)(5) and (1) of the Act.

Respondent's failure and refusal to provide information to Local 4090 did not otherwise violate the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, American Telephone and Telegraph Company, Network Systems Customer Support and Operations Division, Oak Park, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the following information to Michigan Local 4090, Communications Workers of America, AFL–CIO about the Respondent's work in Michigan that the Respondent has undertaken, or will undertake, pursuant to an arrangement with GTE Corporation:

(1) The location of the subcontractors' worksites.

(2) The approximate number of employees the subcontractors have used or will use.

(3) A description of all work operations performed or to be performed by the subcontractors.

(4) The duration of all subcontracts, including beginning and ending dates.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to Local 4090 the information described above in paragraph 1(a)(1) through (4).

(b) Post at its facilities in Michigan, copies of the attached notice marked ''Appendix.''[21] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by a representative of the Respondent, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[18] Some of the requested information would obviously be relevant to any unfair labor practice charge Local 4090 might have wanted to file concerning a failure to bargain on the Respondent's part prior to entering into the subcontracts. (That is particularly true of the request for bidding dates.) But an employer is not required to provide information to a union where, as far as the employer knows, the union's information request ''is akin to a discovery device pertinent to its pursuit of [an] unfair labor practice charge rather than to its duties as collective bargaining representative.'' *WXON-TV*, 289 NLRB 615, 617–618 (1988). I note that in many cases the Board has concluded that employers were obliged to provide the kinds of information that I have found the Respondent was not required to provide to Local 4090. For instance, as to copies of subcontracts (item 1 in Horton's August 5 letter) see *Arch of West Virginia*, supra; *Island Creek Coal Co*., supra. But in those cases the employers had actual or constructive notice of the union's reasons for wanting the information that made such information relevant.

[19] See *Interstate Food Processing*, 283 NLRB 303, 306 (1987).

[20] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[21] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to furnish Michigan Local 4090, Communications Workers of America, AFL–CIO with information relevant and necessary for bargaining about subcontracting by American Telephone and Telegraph Company, Network Systems Customer Support and Operations Division, or for the proper prosecution of grievances concerning such subcontracting.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights that Section 7 of the National Labor Relations Act guarantees to you.

WE WILL furnish Local 4090 with the following information about the work in Michigan undertaken pursuant to our agreement with GTE Corporation:

(1) The location of subcontractors' work sites.

(2) The approximate number of employees used by subcontractors.

(3) A description of all work operations performed or to be performed by the subcontractors.

(4) The duration of all subcontracts, including beginning and ending dates.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, NETWORK SYSTEMS CUSTOMER SUPPORT AND OPERATIONS DIVISION